



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590



APR 10 2012

GENERAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

COPY

Mr. Donald M. Samson
Trustee for the Bankruptcy Estate of Chemetco, Inc.
226 West Main Street, Suite 102
Belleville, Illinois 62220

Hand-delivered 4.11.12
M.K.

Re: General Notice and Information Request for the Chemetco Superfund Site in Hartford,
Illinois

Dear Mr. Samson:

Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency (EPA) is responsible for responding to the release or threat of release of hazardous substances, pollutants, or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the Chemetco Site (Site) located in Hartford, Illinois. EPA has spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Based on information presently available to EPA, EPA has determined that you may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

Explanation of Potential Liability

Under CERCLA, specifically Sections 106(a) and 107(a), potentially responsible parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare, or the environment. PRPs may also be responsible for costs incurred by EPA in cleaning up the Site, unless the PRP can show divisibility or any of the other statutory defenses. PRPs include current and former owners and operators of a Site, as well as persons who arranged for treatment and/or disposal of any hazardous substances found at the site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.

EPA has gathered data, documents, and information from the Site. EPA has also received and reviewed responses to Illinois Environmental Protection Agency's 2008 Information Request, and responses to EPA's 2011 Information Request, which were sent to parties with connection to the Site. EPA is also attaching an Information Request to this Notice for parties that have yet to receive

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such a request, to complete its initial information gathering related to this Site. Based on the information collected, EPA believes that you may be liable under Section 107(a) of CERCLA with respect to the Chemetco Site, as a/an (1) arranger, who by contract or agreement, arranged for the disposal, treatment, or transportation of hazardous substances at the Site; (2) transporter, who by contract or agreement, accepted hazardous substances for transportation and disposal at, and selected the Site; or (3) current or previous owner and/or operator of the Site. Specifically, EPA has reason to believe that your company contributed or transported materials containing lead, non-recyclable materials, or recyclable materials that fail to meet the criteria necessary for an exemption under the Superfund Recycling Equity Act (SREA) of 1999, Section 127 of CERCLA, 42 U.S.C. § 9627, or other materials to the Site, and/or arranged for the disposal, treatment, or transportation of such materials to the Site.

To date, EPA and the State of Illinois have taken response actions at the Site under the authority of the Superfund Program. Below is a brief description of the actions taken at the Site.

- A Preliminary Assessment and Site Investigation in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site.
- An Expanded Site Inspection to further characterize any risks posed to human health and/or the environment by releases or threatened releases from the Site, and to support scoring the Site with EPA's Hazard Ranking System for proposal to the National Priorities List.
- An enforcement investigation to identify PRPs at the Site.
- Scoping the Remedial Investigation to identify the Site characteristics and to begin to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the (immediate) risks posed by the Site.

De Minimis Settlements

Under Section 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties.

Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlers to pay their fair share of cleanup costs incurred, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlers receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) protection from contribution claims, which provides a settling party with protection from being sued in a contribution action by other responsible parties for the specific matters addressed in the settlement. (The matters addressed in a *de minimis* settlement are typically all cleanup actions and all cleanup costs at the particular site.) Participation in a *de*

minimis settlement means that you are settling directly with EPA as soon as it is possible to do so.

The protection from contribution suits for *de minimis* settlers is based on Sections 113(f)(2) and 122(g)(5) of the CERCLA law, which provide that a person "who has resolved its liability to the United States" in an administrative or judicially approved settlement "shall not be liable for claims for contribution regarding matters addressed in the settlement." This protection against contribution claims, however, may not extend to claims by third parties that have incurred their own response costs and seek to recover them under Section 107(a)(4)(B). See *United States v. Atlantic Research Corporation*, 127 S.Ct. 2331, 168 L.Ed. 2d 28 (June 11, 2007). (In certain situations, a liable party who has incurred cleanup costs at a site can sue other liable parties under CERCLA Section 107(a)(4)(B)).

If your company believes that it may be eligible for a *de minimis* settlement at this Site, please contact Margaret Herring, Civil Investigator, at 312-886-6239, by mail at U.S. EPA Region 5, 77 W. Jackson Blvd., S-6J, Chicago, Illinois 60604, or via email at herring.margaret@epa.gov for additional information on *de minimis* settlements.

Financial Concerns/Ability to Pay Settlements

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact Margaret Herring, at 312-886-6239 or via email at herring.margaret@epa.gov for information on "Ability to Pay Settlements." In response, you will receive a package of information about the potential for such settlements and a form to fill out with information about your finances, and you will be asked to submit financial records including business federal income tax returns. If EPA concludes that you have a legitimate inability to pay the full amount of EPA's costs, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from you. Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy.

Information to Assist You

EPA would like to encourage communication between you, other PRPs, and EPA about the Site. EPA recommends that all PRPs meet to select a "steering committee" that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with EPA. If this is not possible, EPA encourages each PRP to select one person from its company or organization to represent its interests to EPA. PRPs may respond individually, as a group, or through a steering committee.

To assist you in your efforts to communicate, please find the following attached information:

1. A list of names and addresses of PRPs to whom this letter is being sent.

2. To the extent information is available, a list of the weight and type of substances contributed by each PRP to the Site from approximately 2000-2001. This is an initial list and subject to change based upon new information.
3. A fact sheet that describes the Site.

EPA invites you to participate in formal negotiations with EPA to reach settlement providing for the PRPs to conduct or finance the response activities required at the Site.

EPA also will establish an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record will be located at the Hartford Public Library, 143 West Hawthorne Street, Hartford, Illinois, 62048 (M-Th 12 pm-6pm; F, Sa 12 pm-4 pm) and will be available to you and the public for inspection and comment. The Administrative Record will also be available for inspection and comment at the Superfund Records Center, EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604 (M-F, 8 am-4 pm).

Resources and Information for Small Businesses

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/brownfields/laws/index.htm> and review EPA guidance regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/index.html>.

In addition, if you are a "service station dealer" who accepts used oil for recycling, you may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Internet at <http://www.epa.gov/compliance/cleanup/superfund/defenses.html>. If you believe you may qualify for the exemption, please contact Margaret Herring, at 312-886-6239 or via email at herring.margaret@epa.gov to request an application/information request specifically designed for service station dealers.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/sbo>. Finally, EPA developed a website about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is located at <http://www.epa.gov/sbrefa/>.


Send your response to this notice of potential liability to:

Michelle Kerr, Remedial Project Manager
U.S. Environmental Protection Agency – Region 5
Superfund Division (SR-6J)
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

Please give these matters your immediate attention and consider consulting with an attorney. You are encouraged to notify EPA within 30 days of receipt of this letter of your interest in participating in future negotiations. If you have any questions regarding this letter, please contact Thomas Martin, Associate Regional Counsel, at 312-886-4273, by mail at EPA Region 5, 77 W. Jackson Blvd., MC-14J, Chicago, Illinois 60604, or via email at martin.thomas@epa.gov. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joan Tanaka', with a long horizontal line extending to the left.

 Joan Tanaka, Chief
Remedial Response Branch #1

Enclosures (3)

cc: Sam Flood, Todd Rettig, IDNR
Douglas P. Scott, IEPA
Gary King, IEPA
Erin Rednour, IEPA
Chris Cahnovsky, IEPA
James L. Morgan, IAGO
Michael Chezik, US DOI
Wayne Babcock, US DOI
Ed Schafer, USDA
Greg Sukys, US DOJ